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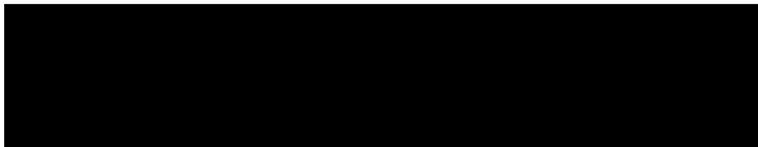


FILE: WAC 04 181 51031 Office: CALIFORNIA SERVICE CENTER Date: MAY 02 2006

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

for Michael T. Kelly
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is an elderly care facility that seeks to employ the beneficiary as a quality assurance coordinator. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the

director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a quality assurance coordinator. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's June 2, 2004 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: reviewing the petitioner's quality assurance standards; studying existing company policies and procedures; interviewing the facility's personnel and patients to evaluate the effectiveness of the quality assurance program; evaluating and interpreting collected data; preparing written quality assurance reports and programs; developing forms and procedures to review, track and compile information on policies and procedures of the evaluation of patients' medical records, such as problem procedures, drugs, high volume cases, high risk cases or other factors; coordinating with suppliers of medical equipment and supplies and ensuring proper delivery; reviewing patients' records, applying utilization review criteria, to determine the patients' need for admission and/or continued stay in the nursing facility; overseeing other company personnel engaged in the quality assurance review of medical records; analyzing, evaluating and examining the patients' medical history and medical data to ultimately plan and project the patient's treatment plan and rehabilitation plan and to gauge this against the petitioner's cost and budget position. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in industrial education, with a major in home technology, health care, business administration or a closely related field.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The *Handbook* does not specifically refer to the proffered position. The AAO does not concur with the director that the position is most like a medical and health records technician, as described in the *Handbook*. Since the *Handbook* does not include quality assurance coordinators, the AAO must rely on other factors in its adjudication.

Regarding parallel positions in the petitioner's industry, counsel submitted several advertisements in response to the director's request for evidence. There is no evidence, however, to show that the employers issuing the advertisements are similar to the petitioner, or that the advertised positions are parallel to the instant position. Thus, the advertisements have little relevance.

The record does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. Further, the petitioner has provided no evidence of government regulatory requirements for a degree in a specific specialty. In researching available certifications for quality assurance coordinators on the Internet, the AAO found no evidence supportive of a requirement for a degree in a specific specialty. The Healthcare Quality Certification Board (HQCB), which grants Certified Professional in Healthcare Quality status, has no minimum educational or experiential requirements to be eligible to take the certification exam.¹ The California Association for Healthcare Quality is associated with the National Association for Healthcare Quality, the parent of the HQCB. Another certifying organization, the American Board of Quality Assurance and Utilization Review Physicians, which certifies professionals in addition to physicians, states that in order to take the exam, an applicant must either hold a current non-restrictive license in his or her field, or, if the profession does not require licensure, the credentials committee may determine eligibility based on experience and education.² It appears clear that there is no industry standard regarding educational requirements for entry into the field. Thus, the petitioner has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. While the petitioner submitted two flyers advertising a position for a quality assurance coordinator, they are undated and it is not clear whether they are for the current position or were issued some time in the past. The record does not contain any other evidence of the petitioner's past hiring practices. The petitioner has, thus, not met its burden of proof in this regard. In addition, the AAO notes that CIS interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. Also, the petitioner did not establish how a degree in industrial education, with a major in home technology, is directly related to the duties of the proffered position.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) – the nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

¹ www.cphq.org, accessed April 17, 2006.

² www.abqaurp.org/eligibility.asp, accessed April 17, 2006.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.